

MEMORANDUM

December 14, 2004

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: EDWARD MORRISSEY
Deputy County Counsel

RE: The People of the State of California v. County of Los Angeles
Department of Health Services, Harbor-UCLA Medical Center
Superior Court, County of Riverside

DATE OF
INCIDENT: December 15 and 18, 2003

AUTHORITY
REQUESTED: \$36,129.11 (Paid by Contractor/Indemnitor)

COUNTY
DEPARTMENT: Department of Health Services

CLAIMS BOARD ACTION:

☐ Approve

☐ Disapprove

☐ Recommend to Board of
Supervisors for Approval

_____, Chief Administrative Office
ROCKY ARMFIELD

_____, County Counsel
JOHN F. KRATTLI

_____, Auditor-Controller
MARIA M. OMS

on _____, 2004

SUMMARY

This is a recommendation to settle allegations of improper transport and disposal of medical waste by the County. The parties to the settlement are: District Attorney of the County of Riverside and the Los Angeles County Department of Health Services, Harbor/UCLA Medical Center ("Harbor").

LEGAL PRINCIPLES

This matter involves the treatment and disposal of medical waste, other related waste, and other refuse generated from Harbor. The Riverside County District Attorney alleges that medical waste disposed of was not adequately treated and improperly included pharmaceutical waste in violation of the Medical Waste Management Act and the Unfair Competition Act.

SUMMARY OF FACTS

On December 15, 2003, Riverside County waste management officials purportedly identified untreated medical waste in a 11.5 ton load generated from Harbor for disposal at El Sobrante Landfill in Corona, California. Riverside officials identified certain red (medical waste) bags with temperature strips indicating that the waste had not been properly autoclaved. The medical waste included sharps (*e.g.*, syringes, broken glass) containers which were improperly ruptured such that the public could access the contents and pharmaceutical waste (*e.g.*, medication vials with fluid) normally incinerated by Harbor. Riverside officials contacted Harbor, and arrangements were made to secure and remove the untreated medical waste on December 16, 2003.

On December 18, 2003, Riverside officials again identified purportedly untreated medical waste, pharmaceutical waste, and ruptured sharps containers in a 11.5 ton load at El Sobrante for which Harbor made arrangements to secure and remove as requested.

On January 9, 2004, employees at the Carson Transfer Station in Carson, California identified purportedly untreated medical waste bound for El Sobrante. Harbor representatives were contacted and arrangements were made to secure and remove the untreated medical waste on January 11, 2004.

Harbor representatives and County Counsel subsequently met and spoke with representatives of the District Attorney's Office and Riverside waste management officials in an effort to informally resolve this matter in a civil forum, in lieu of the District Attorney proceeding with a criminal case under the Medical Waste Management Act.

In addition, by way of letter dated June 4, 2004, the County tendered indemnification to Pedus Building Services, the contractor responsible, directly or through subcontracting, for janitorial services and solid waste (which includes medical waste) collection and removal at Harbor. Pedus acknowledged its liability and accepted the County's tender on June 8, 2004.

On August 12, 2004, Harbor submitted documentation to the District Attorney of its revised hospital practices and treatment processes for medical waste, and of the new disposal site for treated medical waste at Sunshine Canyon Landfill in Sylmar, California. At their request, the representatives of the District Attorney also toured Harbor to observe waste collection, treatment, and removal processes.

The District Attorney advised that it was satisfied that Harbor practices would not result in additional disposal of untreated medical waste at El Sobrante and would be amenable to resolving this matter as a civil case in lieu of seeking criminal prosecution of County officials. As agreed to by the parties, Harbor would be permanently enjoined from unlawfully disposing of medical waste and will pay civil penalties and other equitable relief in the amount of \$25,000, and \$11,129.11 in costs, for a total amount of \$36,129.11. Pedus has issued cashier's checks for payment in full of this amount. In addition, Pedus has issued to Los Angeles County a cashier's check in the amount \$2,827.80 as payment for attorney's fees generated by County Counsel.

By way of comparison, three recent cases resolved by the Riverside District Attorney of hospital defendants allegedly improperly disposing medical waste in Riverside County each resulted in payments in excess of \$100,000, excluding costs.

DAMAGES

Under the Unfair Competition Act, each penalty would be punishable by a fine of \$2,500 for each violation. The District Attorney advised that this would be calculated as one violation per each untreated red bag and ruptured sharps container included in the 23 ton total load. The County is aware of at least ten untreated bags and four ruptured sharps containers, for a total penalty of \$35,000, excluding costs.

Under the Medical Waste Management Act, the first violation is punishable by a fine of not less than \$2,000 and/or up to one year in county jail. The second and subsequent violations are punishable by a fine of not less than \$5,000, but not more than \$25,000, up to one year in county jail, and/or 1-3 years in state prison. The District Attorney also advised that if resolved as a criminal case, a mandatory penalty of 170% of the fine is applied.

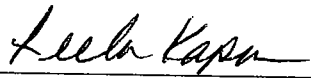
STATUS OF CASE

As set forth above, the parties have reached a resolution. Upon execution of the appropriate documentation and delivery of the cashier's checks issued by Pedus, the District Attorney will concurrently file with the court a Complaint for Injunction, Civil Penalties and other Equitable Relief, and Stipulation for Entry of Final Judgment.

EVALUATION

Given (1) the possibility of criminal proceedings and penalties (2) the favorable settlement amount in comparison to potential liability under the Medical Waste Management Act and the Unfair Competition Act and in comparison to recent settlements, and (3) full indemnification by the County's contractor, Pedus, as well as payment of attorney's fees, the Claims Board's favorable consideration of this recommended settlement is respectfully requested by the Department of Health Services.

APPROVED:



LEELA A. KAPUR
Assistant County Counsel
Public Services Division

LAK:jm